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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 CORY SPENCER, an individual;
12 DIANA MILENA REED, an
13 individual; and COASTAL
14 PROTECTION RANGERS, INC., a
15 California non-profit public benefit
16 corporation;

Plaintiffs,

v.

17 LUNADA BAY BOYS; THE
18 INDIVIDUAL MEMBERS OF THE
19 LUNADA BAY BOYS, including but
20 not limited to SANG LEE, BRANT
21 BLAKEMAN, ALAN JOHNSTON aka
22 JALIAN JOHNSTON, MICHAEL
23 RAE PAPAYANS, ANGELO
24 FERRARA, FRANK FERRARA,
25 CHARLIE FERRARA, and N.F.; CITY
26 OF PALOS VERDES ESTATES;
27 CHIEF OF POLICE JEFF KEPLEY, in
28 his representative capacity; and DOES 1
- 10,

Defendants.

Case No. 2:16-cv-2129-SJO (RAOx)

**REPLY BY DEFENDANT MICHAEL
R. PAPAYANS REGARDING
MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER
JURISDICTION; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Fed. Rules Civ. Proc., Rule 12(b)(1)]

Date: July 25, 2016
Time: 10:00 a.m.
Place: Courtroom No. 1
Second Floor
312 North Spring Street
Los Angeles, California 90012

Hon. S. James Otero

Defendant MICHAEL R. PAPAYANS submits this Reply regarding his Motion to Dismiss this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure due to lack of subject matter jurisdiction.

MEMORANDUM OF POINTS AND AUTHORITIES

I. The Court's Discretion Regarding Supplemental Jurisdiction

4 The Court today ruled that Plaintiffs have stated a federal equal protection
5 claim. In light of this ruling, Defendant defers to the Court as to the exercise of
6 supplemental jurisdiction over the state law claims. If the Court exercises such
7 supplemental jurisdiction, Defendant reserves the right to raise the issue again.
8 “While the district court’s power to exercise jurisdiction under the ‘same case or
9 controversy’ requirement in 28 U.S.C. § 1337(a) is one ordinarily resolved on the
10 pleadings, the court’s decision to exercise that jurisdiction ‘is one which remains
11 open throughout the litigation.’” *Innovative Home Health Care, Inc. v. P.T.-O.T.*
12 *Associates of the Black Hills*, 141 F.3d 1284, 1287 (8th Cir. 1998).

II. Admiralty Jurisdiction May Not Be Based on Information and Belief

15 In regard to admiralty jurisdiction, the Complaint alleges one specific injury
16 suffered in the water by a Plaintiff. In January 2016, an unidentified individual
17 “intentionally ran [Plaintiff Cory] Spencer over with his surfboard and sliced open
18 Spencer’s hand.” Complaint, ¶ 21. Spencer also alleges that, in February 2016, he
19 apparently “observed” from a “bluff” unidentified individuals “threaten and taunt
20 [other] surfers.” *Id.* It is not clear what Spencer observed, how badly his hand was
21 injured, or what he claims as damages.

22 By contrast, the entire lawsuit in the Florida district court decision “grew out
23 of” the accident between the surfer and the swimmer. *Davis v. City of Jacksonville*
24 *Beach, Florida*, 251 F.Supp. 327, 328 (M.D.Fla. 1965). Similarly, admiralty
25 jurisdiction also existed over tort claims by two women who were seriously injured
26 when thrown off a jet-ski in San Diego’s Mission Bay. *In re Mission Bay Jet*
27 *Sports, LLC*, 570 F.3d 1124, 1125 (9th Cir. 2009).

1 This lawsuit is not based on Spencer's hand injury. This lawsuit asserts
2 admiralty jurisdiction based on allegations regarding access to the beach. The
3 alleged maritime incidents, however, are all on "information and belief" and
4 involved other surfers, swimmers, or visitors. Complaint, pp. 9-10, ¶ 18.

5 "Allegations of federal subject matter jurisdiction may not be made on the
6 basis of information and belief, only personal knowledge." *Lyerla v. AMCO Ins.*
7 *Co.*, 462 F. Supp. 2d 931, 931 (S.D.Ill. 2006) (citing *Am.'s Best Inns, Inc. v. Best*
8 *Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992) (in diversity action, "only
9 the affidavit made on personal knowledge has any value ('to the best of my
10 knowledge and belief' is insufficient), ...because it says nothing about citizenship.")

11 Information-and-belief allegations are not sufficient for admiralty jurisdiction.

13 DATED: July 12, 2016

HAVEN LAW

15 By: s/ Peter T. Haven
16 Peter T. Haven
17 Attorney for Defendant
18 MICHAEL R. PAPAYANS

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